City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: April 7, 2008

Meeting Date: April 14, 2008

Subject: 3290 Sweet Drive – Request for New Railing/Fence Placed on an Existing Concrete Block Wall that Encroaches into the City's Right-of-Way

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Introduction

Francis J. Dodd and Denise P. Dodd own the property at 3290 Sweet Drive. The Dodds are requesting permission to replace an old solid wood lagging fence that was built on top of an existing concrete block wall, with a new fence/railing on top of the same block wall. The new fence/railing would have spaced vertical bars as opposed to the existing solid wood lagging. They are also requesting permission to add a concrete block garbage enclosure with a fence/railing to match the rest of the improvements. These modifications are part of a house remodel project. The Design Review Commission recently reviewed and approved the house remodel. Most of the new improvements, and retrospectively the associated existing block wall, will require an encroachment agreement because they are located within the public right of way. Staff recommends approval of the agreement.

Discussion

The City's right-of-way along the subject property is approximately 14 feet from the striped edge of the paved road. The attached plan (Figure 1) shows the locations of the right of way line, the edge of the travel lane, the edge of pavement at the paved shoulder, and the concrete wall. The attached plan also shows the location of the proposed concrete garbage enclosure. All proposed improvements are approximately 8.5 feet to 10 feet from the vehicle travel lane.

The attached photographs (Figures 2A and 2B) show the existing block wall with the existing fence that is currently covered with ivy. The photographs, and Figure 1, also show that there is an existing paved shoulder and a landscape strip between the travel

lane and the concrete wall. Since the proposed new fence/railing will be placed on the existing wall, the distance between the travel lane and the new improvements will not change.

Figure 3 shows the details for the new fence and railing on top of the existing wall. The maximum height of the concrete block wall and railing combined will be 6 feet. The railing height and spacing of the vertical bars are designed to meet building codes and also to provide a more open look than the existing solid wood fence. The proposed gap in the wall to allow access to the front door walkway also decreases the amount of screening between the street and the home. The existing wall, new pillars, and new garbage enclosure will all have a stucco finish to match the home. The colors of the finish are listed on Figure 3 and are per the Design Review Commission.

Figure 4 shows a marked up photograph of the proposed railing on top of the existing concrete block wall. Since the street is sloped, the highest section of concrete block wall is on the right side of the photograph at the driveway. At this location the wall is 4 feet high. On the left side of the photograph the top of the block wall is at ground level. The owner proposes placing a 2-foot high railing along the top of this entire frontage section of block wall that ranges from 0 feet to 4 feet high. Therefore, the top of the railing will vary between 2 feet and 6 feet above ground level. The proposed railing would only step up to 42 inches high at the far left side of Figure 4 for the section of railing that diagonals back toward the home (also see Figure 1 for plan view of the diagonal section).

Figure 5 shows a photograph of the proposed location of the new section of concrete block wall with railing that will function as a garbage enclosure. This enclosure would be in line with the rest of the existing block wall and would be located on the house side of the existing shoulder paving and utility pole. The design of the enclosure would match the rest of the block wall/railing with a maximum wall height of 4 feet and a maximum height at the top of the railing of 6 feet. The color of the stucco finish would also match the home (See Figure 3 for wall/railing details and finish colors).

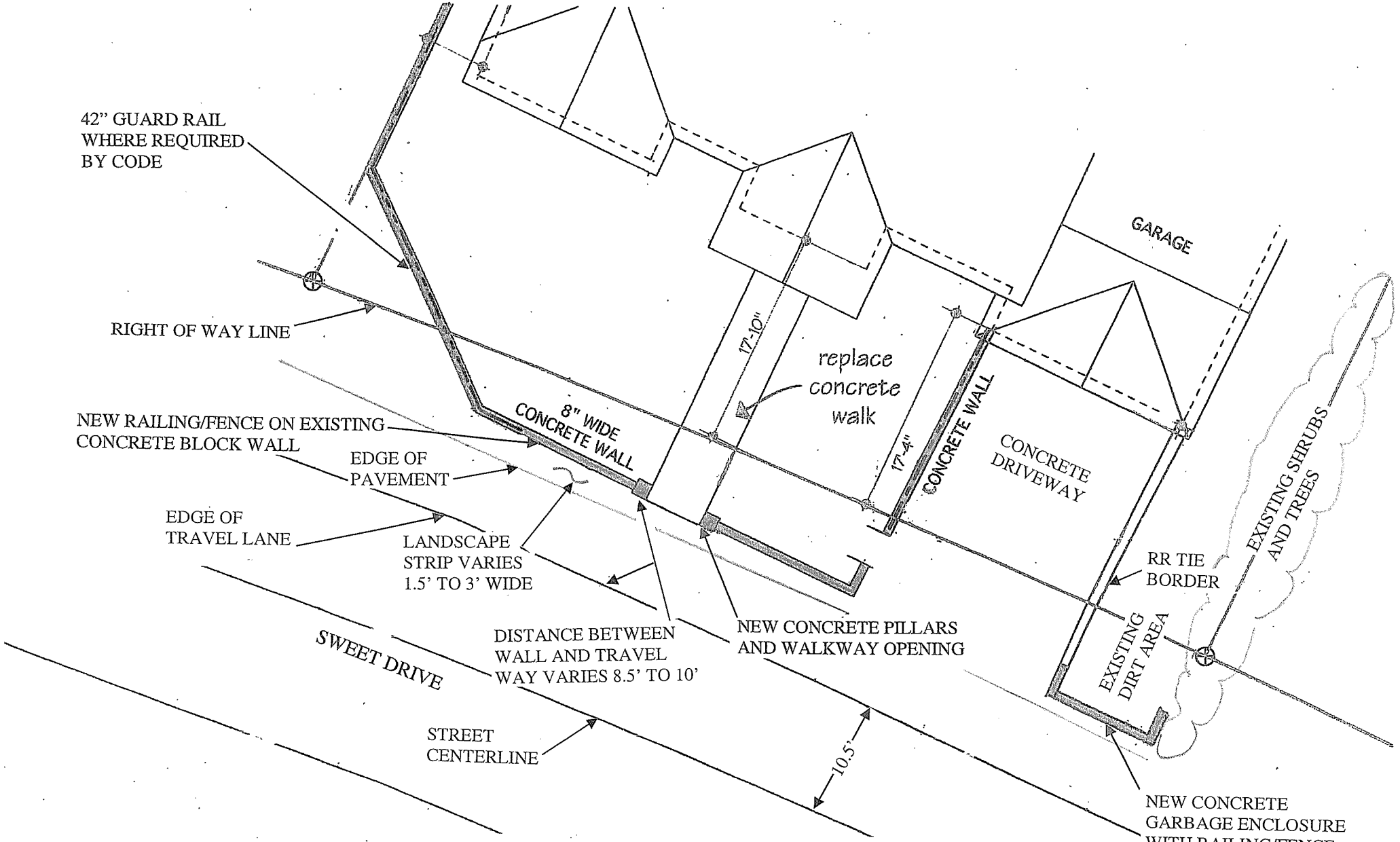
The City just paved Sweet Drive in 2007 including the installation of a walkway along portions of the street. At this time the City does not have further plans to widen or to install improvements along the edge of the road. Since the improvements are approximately 8 feet from the travel lane, any future shoulder improvements (such as a walkway extension to this area) could likely be added without removing the new improvements. However, the property owners understand that they are responsible for removing the encroaching improvements if the City deems necessary in the future. The proposed encroachment agreement which includes this removal condition is attached to this staff report (Attachment 1). Based on these considerations, staff recommends approval of this encroachment.

Fiscal Impact

None

Recommendation

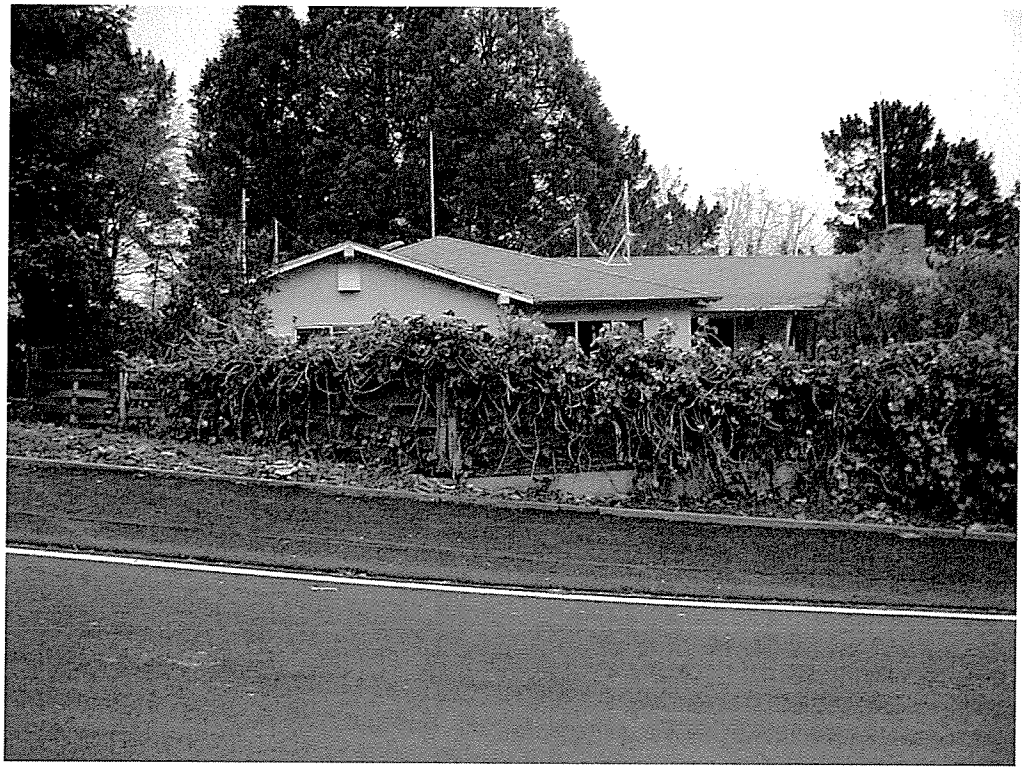
Approve the encroachment into the City right of way along the property frontage of 3290 Sweet Drive and authorize the Mayor to execute an encroachment agreement with the applicants.



3290 SWEET DRIVE, LAFAYETTE, CA

NEW RAILING/FENCE ON EXISTING CONCRETE BLOCK WALL
AND MATCHING CONCRETE BLOCK GARBAGE ENCLOSURE

Figure 1

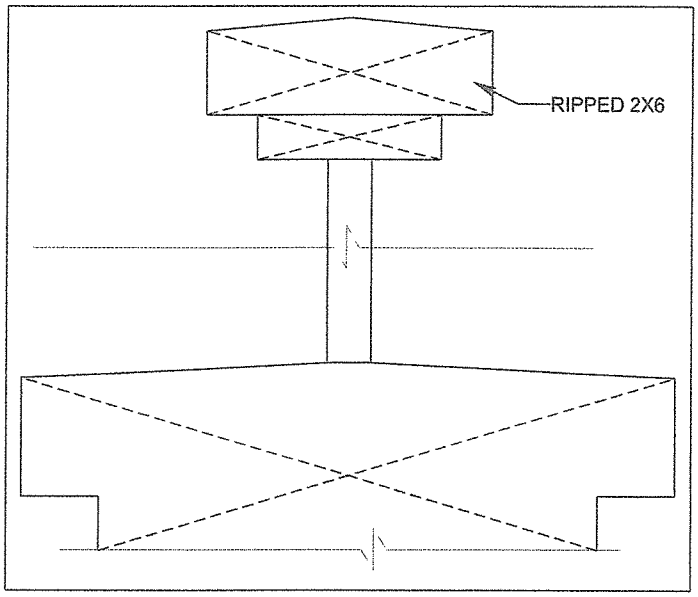


Photographs of Existing Wood Fence on Existing Concrete Wall

Figure 2A

Photograph of Existing Wood Fence on Existing Concrete Wall

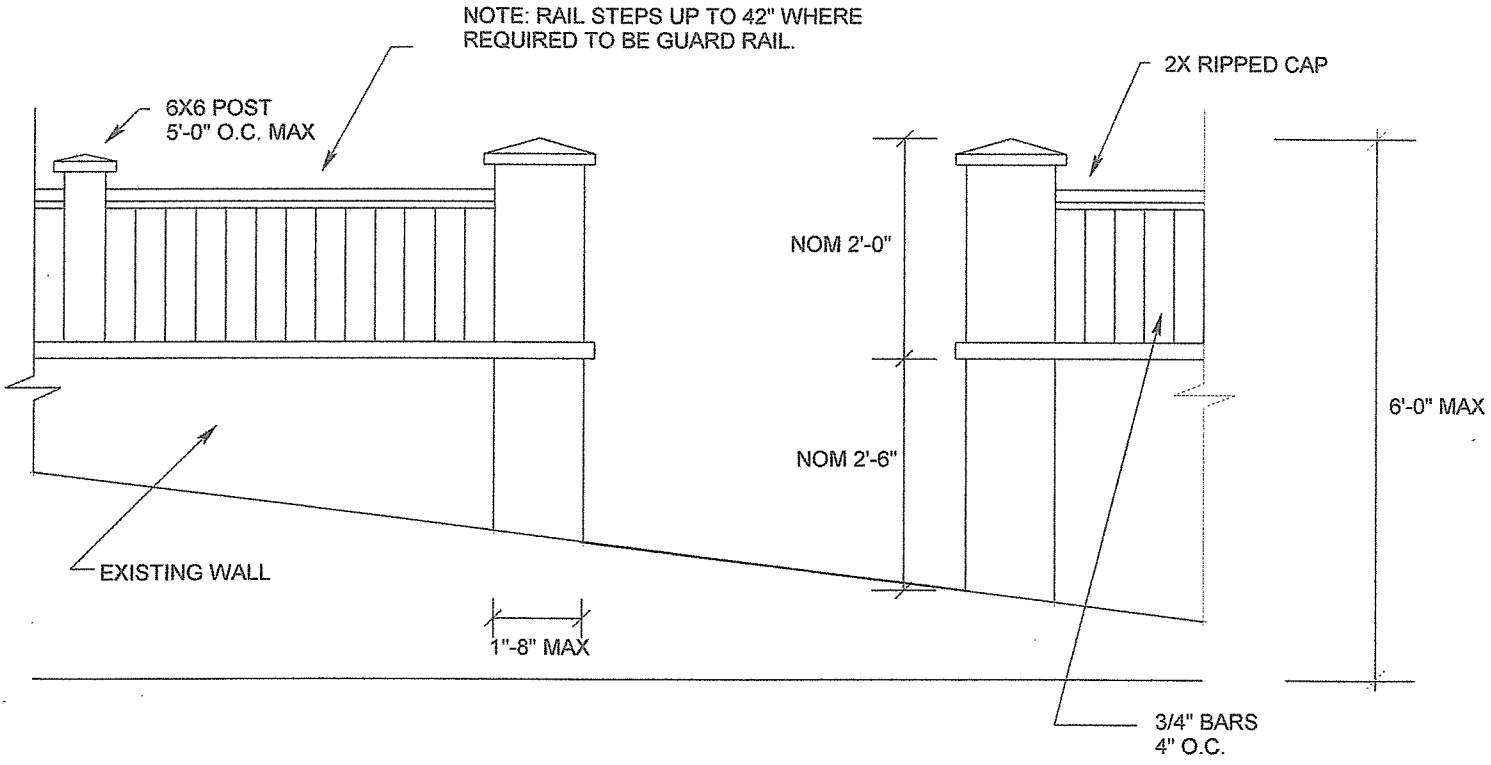
Figure 2B



NOTE: COLOR AND FINISH TO MATCH HOUSE
(PER DRC 12/11/07)

KELLY-MOORE PAINTS

BODY - 213 LEMON GRASS
TRIM #1 - KM3995 SKIN LIGHT
TRIM #2 - 212 SALITO



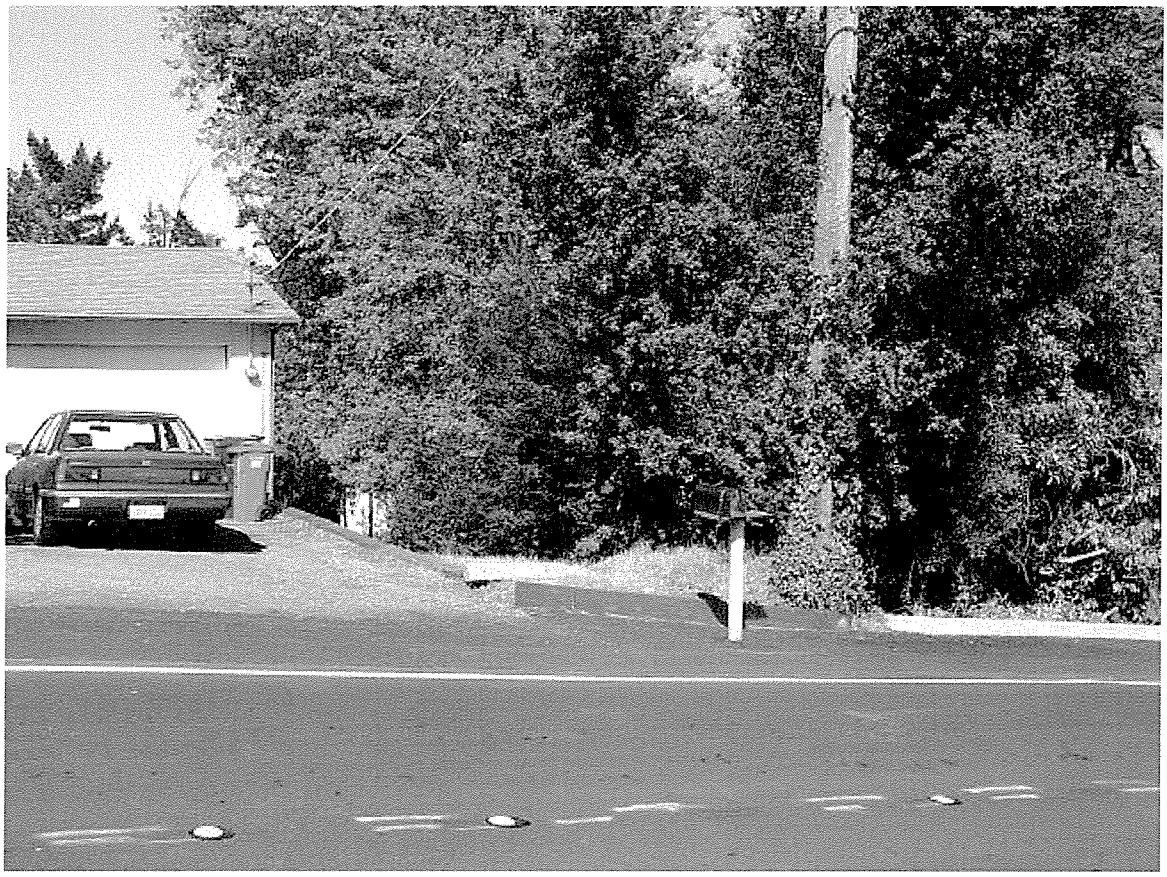
3290 SWEET DRIVE - MODIFIED FRONT FENCE

NO SCALE

Figure 3

Marked up Photograph of Proposed Railing on Existing Concrete Block Wall

Figure 4



Proposed Location for a New Section of Concrete Block Wall with Railing

Figure 5

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of up to a 42-inch tall fence/railing placed on top of a concrete block wall for a combined maximum height of 6 feet within a Public Right-of-Way along Sweet Drive at 3290 Sweet Drive.

This Agreement is entered into this April 14, 2008 between Francis J. Dodd ("property owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3290 Sweet Drive, California, APN 236 122 0011 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to construct a 42-inch tall fence/railing on top of an existing concrete block wall and add an additional section of concrete block wall with fence/railing which will encroach into the public right-of-way along Sweet Drive at 3290 Sweet Drive. The maximum height of the new fence/railing and the concrete block wall combined shall not exceed 6 feet. In connection with his request for an encroachment permit, Property owner has submitted plans to the City for the construction of the concrete block wall and fence/railing.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of up to a 42-inch tall fence/railing placed on a cocncete block wall with new entry columns. The total height not to exceed 6 feet above the ground.

Property Owner is permitted to place fence/railing which substantially conforms to the plans submitted to the City described in paragraph B above and a new section of concrete block wall with fence/railing that matches the existing wall, to encroach into the public right-of-way along 3290 Sweet Drive, and shall obtain any building permit, which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the concrete block wall and fence/railing as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to all improvements installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the concrete block wall and fence/railing permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking " of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking" including reasonable attorney's fees costs, alleged to have resulted from the location of the concrete block wall and fence/railing within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the wall and fence/railing. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the block wall and fence/railing

Property Owner is responsible for maintaining the improvements described in Paragraph 1. Property Owner shall maintain the concrete block wall and fence/railing in a safe and attractive condition as an encroachment within the City's right-of-way area. The improvements may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove

If Property Owner fails to meet the standard necessary to maintain the concrete block wall and fence/railing, the City may give written notice of the deficiency to Property Owner who shall have 30 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the concrete block wall and fence/railing, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching wall

and fence/railing. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the concrete block wall or fence/railing which encroach after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the statutory rate until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the wall and fence/railing. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) giving Property Owners written notice at least 20 days prior to City Council vote 3) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the concrete block wall and/or fence/railing described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

Francis J. Dodd
3289 Sweet Drive
Lafayette, CA 94549

When the Property Owners cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City its attorney-in-fact to do all acts and things that the City considers necessary and reasonable to restore or maintain the concrete block wall and fence/railing.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Mike Anderson - Mayor

PROPERTY OWNER(S)

_____
Francis J. Dodd

* Notarial Acknowledgment Required.

ATTEST:

_____
Joanne Robbins, City Clerk

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situate in the County of Contra Costa, State of California, described as follows:

(City of Lafayette)

Lot 184, as shown on the Map entitled, "St. Marys Estates, Contra Costa County, California," filed on May 11, 1949 in the office of the County Recorder of said County in Book 37 of Maps at Page 30.